

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-1249V

UNPUBLISHED

CORRENE JOHNSON,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 17, 2020

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Isaiah Richard Kalinowski, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.*

*Kyle Edward Pozza, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On September 13, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”) Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) causally related to the influenza vaccination she received on December 1, 2016. Petition at ¶¶ 1, 7. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 27, 2018, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On April 16, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$177,704.42, representing compensation in the amount of \$175,000.00 for her pain and suffering and

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

in the amount of \$2,704.42<sup>3</sup> for her actual unreimburseable expenses. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$177,704.42, representing compensation in the amount of \$175,000.00 for her pain and suffering and in the amount of \$2,704.42 for her actual unreimburseable expenses in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> In the Proffer, Respondent made a simple mathematical mistake when setting forth the subtotals, indicating the compensation for Petitioner's unreimburseable expenses was \$2,704.02 instead of \$2,704.42. Respondent's counsel confirmed by email correspondence that the total indicated in the Proffer was correct and that minor mistake was the only incorrect amount in the Proffer. See Informal Remark, dated Apr. 16, 2020. Copied on all email correspondence, Petitioner's counsel indicated that Petitioner did not believe a corrected Proffer was needed. I agree.

<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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No. 17-1249V

Chief Special Master Corcoran (SPU)  
ECF

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On July 27, 2018, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. Thereafter, on the same date, then-Chief Special Master Dorsey issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration (“SIRVA”) and related sequela.<sup>1</sup>

**I. Amount of Compensation**

Respondent now proffers that, based on the Chief Special Master’s entitlement decision and the evidence of record, petitioner should be awarded **\$177,704.42**. The award is comprised of the following: \$175,000.00 for pain and suffering, and \$2,704.02 for past unreimbursed expenses. This amount represents all elements of compensation to which petitioner would be entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

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<sup>1</sup> Petitioner subsequently underwent left shoulder surgery and was thereafter diagnosed with complex regional pain syndrome (“CRPS”).

## II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made as described below, and request that the Chief Special Master's damages decision and the Court's judgment award the following:<sup>2</sup>

### A. Petitioner's Damages

Respondent recommends that the compensation provided to petitioner should be made through:

a lump sum of **\$177,704.42**, in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under **42 U.S.C. § 300aa-15(a)**.

Petitioner agrees.

### B. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Deputy Director  
Torts Branch, Civil Division

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Torts Branch, Civil Division

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<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

s/ KYLE E. POZZA

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Dated: April 16, 2020